

Ahearn



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Prison Match, Inc.
File: B-233186
Date: January 4, 1989

DIGEST

Protest by fourth low bidder, which would not be in line for award if the protest were sustained, is dismissed, since the protester does not have the requisite direct and substantial economic interest in the contract award to be considered an interested party under General Accounting Office Bid Protest Regulations.

DECISION

Prison Match, Inc., the incumbent contractor, protests the award of a contract to Personal Dynamics Institute (PDI) under invitation for bids (IFB) No. 122-0066-9, issued by the Federal Bureau of Prisons, Department of Justice, for parental training and family guidance services at the Federal Correctional Institution in Dublin, California.

We dismiss the protest.

The IFB solicited early childhood education professionals to provide counseling and guidance in parenting techniques to inmate parents, as well as case work assistance to inmate families. Bids were opened September 26, 1988, and the contracting officer made an affirmative determination of PDI's (the low offeror) responsibility on September 29. The agency then mailed a preliminary notice of award to the firm; however, performance has been suspended, pending resolution of the protest, in accordance with Federal Acquisition Regulation § 33.104(c). Prison Match essentially argues that PDI is incapable of performing in accordance with the delivery schedule and has an unqualified staff.

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As a preliminary matter, we must consider whether the protester, the fourth low bidder, is an interested party. Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1988), a party must be "interested," that is, must have a direct economic interest in the award of or failure to award a contract in order to have its protest considered by our Office. Generally, a party will not be deemed to have the necessary direct economic interest to be considered an interested party where it would not be in line for award even if its protest were sustained, and we will dismiss a protest under these circumstances. Systems-Analytic Group Corp., B-229836, Apr. 12, 1988, 88-1 CPD ¶ 358. As Prison Match is the fourth low bidder and has not contested the acceptability of the second and third low bidders, the firm would not be in line for the award here if its protest were sustained, and thus is not an interested party.

Prison Match maintains that it is in fact interested because the responsiveness of the second and third low bidders has not yet been determined; therefore it is not known whether either of these bidders would be in line for the award if PDI's contract were upset. We have specifically held, however, that a protester's interest in a procurement is too remote to render the protester an interested party within the meaning of our regulations where there are intervening bidders whose eligibility for award has not been challenged. See Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473. Thus, Prison Match is not an interested party eligible to protest, and we dismiss the protest on this basis. Priscidon Enterprises, Inc., B-230035, Mar. 18, 1988, 88-1 CPD ¶ 290; see also State Technical Institute at Memphis, B-229695 et al., Feb. 10, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 135.

We point out for the protester's information that the agency's conclusion regarding the awardee's ability to perform is a matter of PDI's responsibility as a prospective contractor. Our Office will not question the contracting officer's affirmative determination of a firm's responsibility where there is no showing of fraud or bad faith. There has been no showing here. Although the protester alleges that PDI stated in a telephone conversation with the agency that the firm would not be able to perform immediately and lacked qualified professionals, the record indicates that the contracting officer specifically determined that the awardee had the ability and necessary support staff to perform as required after making

reference checks and obtaining from and the awardee the required teaching certificates and resumes.^{1/}

The protest is dismissed.

Ronald Berger

Ronald Berger
Associate General Counsel

^{1/} Initially, the protester also complained that the awardee was given unfair preferential treatment through solicitation of the firm by the agency, access to information not in the IFB (i.e., the protester's anticipated bid cost), and discussions not held with other firms. In its comments to the agency report, the protester did not again raise this issue; therefore, we consider Prison Match to have abandoned this protest ground. See ICR, Inc.-- Request for Reconsideration, B-223033.2, Nov. 4, 1986, 86-2 CPD ¶ 516. In this respect, however, the agency advises us that its Office of Inspections is investigating the allegation of the awardee's access to information not in the IFB.